

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

KERRY SMITH, et al.,)	
)	
Plaintiffs,)	
)	
v.)	No. 10 C 8276
)	
MHI INJECTION MOLDING)	
MACHINERY, INC., et al.,)	
)	
Defendants.)	

MEMORANDUM ORDER

MHI Injection Bolding Machinery, Inc. and Mitsubishi Heavy Industries America, Inc. (collectively "Mitsubishi") have filed their Answer to the Fourth Amended Complaint filed by Kerry and Cheryl Smith. This memorandum order is issued sua sponte because of one problematic aspect of that responsive pleading.

Answer ¶¶42 through 46 and 48 fail to track the roadmap of Fed. R. Civ. P. ("Rule") 8(b)(5) that must be followed for a responding defendant to get the benefit of a deemed denial of a plaintiff's allegation. Then, to compound that error, Mitsubishi's counsel has concluded the mistakenly-framed disclaimer with the clause "and, therefore, deny the same."

That denial would be oxymoronic even if the disclaimer had been properly stated. How can a party that asserts (presumably in good faith) that it lacks even enough information to form a belief as to the truth of an allegation then proceed to deny it in accordance with Rule 11(b)? Accordingly the quoted phrase is stricken from each of those paragraphs of the Answer.

Under the circumstances Mitsubishi's counsel will not be sent back to the drawing board for a total recasting of the Answer. Instead the offending paragraphs are stricken, with leave being granted to file an appropriate amendment to the Answer on or before October 14, 2013. No charge is to be made by Mitsubishi's counsel for the added work and expense incurred in correcting counsel's errors. Mitsubishi's counsel is ordered to apprise her clients to that effect by letter, with a copy to be transmitted to this Court's chambers as an informational matter (not for filing).



Milton I. Shadur
Senior United States District Judge

Date: October 2, 2013